

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

VIRGIL R. MORRIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 02-026-SLR
	)	
RICHARD F. STOKES,	)	
ROBERTA BURNS, and	)	
SUSAN RICKARDS,	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

At Wilmington, this 18<sup>th</sup> day of March, 2004, having reviewed the motion of defendant Stokes to dismiss for failure to state a claim upon which relief can be granted (D.I. 15), and the memoranda submitted therewith;

IT IS ORDERED that defendant's motion (D.I. 15) is **granted** for the reasons that follow:

1. Plaintiff, a pro se litigant proceeding in forma pauperis, filed this action on January 11, 2002 pursuant to 42 U.S.C. § 1983 alleging violations of the Eight and Fourteenth Amendment against the Honorable Richard F. Stokes, Superior Court Judge in Sussex County, Roberta Burns, and Susan Rickards.<sup>1</sup>

(D.I. 2)

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<sup>1</sup>Plaintiffs' complaint identifies defendant Rickards as "Susan," but the court notes that the correct spelling of her name is "Suesann." (D.I. 12)

2. Plaintiff is a former inmate previously incarcerated at the Sussex Correctional Institution in Georgetown, Delaware. Plaintiff was sentenced on July 6, 2001, by Judge Stokes after having been found guilty of driving under the influence of alcohol. As it was plaintiff's fourth DUI offense, Judge Stokes sentenced plaintiff to a mandatory minimum six months term of incarceration and ordered his participation in the Key program.<sup>2</sup> (D.I. 16, ex. 1)

3. Plaintiff contends that at some point between July 9, 2001 and August 31, 2001, plaintiff suffered severe angina attacks as a direct result of his mandatory participation in the Key program. (D.I. 2 at 4) Plaintiff contends that defendant Burns declined to provide a medical waiver for plaintiff from the program, but instead prescribed certain activity restrictions for plaintiff. (Id.) Defendant Burns allegedly based her decision upon instructions by her supervisor Rickards. (Id.) On August 31, 2001, plaintiff contends that despite reporting his chest pain, defendant Burns failed to issue a medical waiver. Later that day, however, defendant Burns provided a memorandum to plaintiff excusing him from the Key program.

4. Plaintiff contends that the defendants acted with deliberate indifference to his serious medical condition, and

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<sup>2</sup>The Key program is a substance abuse treatment program for offenders with a basic self-help therapeutic community approach. (D.I. 16 at 3)

that their conduct "caused possible heart damage and the risk of serious physical injury and the unnecessary and wanton infliction of pain and suffering proscribed by the Eighth Amendment." (Id.) Plaintiff seeks both injunctive relief and money damages.<sup>3</sup>

5. In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v. Harrisburg County Police Dep't., 91 F.3d 451, 456 (3d Cir. 1996). The moving party has the burden of persuasion. See Kehr

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<sup>3</sup>As plaintiff is no longer incarcerated in a Delaware correctional facility, any claim he might have had for injunctive relief is moot.

Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

6. It is well settled law that a judge is entitled to absolute immunity from civil damages for suits brought under 28 U.S.C. § 1983. See Stump v. Sparkman, 435 U.S. 349, 363 (1978). In the present case, defendant Stokes sits as a judge in the Delaware Superior court, a court of general jurisdiction, and the conduct plaintiff contends gives rise to his claim was an official judicial act. Consequently, no suit may lie against Judge Stokes for money damages and the complaint, as to Judge Stokes, is dismissed.

Sue L. Robinson  
United States District Judge